

# SENATE BILL No. 328

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 22-9-1.

**Synopsis:** Disability and retaliation in civil rights cases. Revises the definitions of "discriminatory practice" and "disability". Expands the provisions prohibiting a retaliatory action against a person assisting the commission to include a retaliatory action against a person who assists in an investigation or opposes an unlawful discriminatory practice. Eliminates exemptions to applicability of the civil rights law to certain workplace practices. Includes the term "disability" in a provision concerning investigations and recommendations to the general assembly. Requires the provisions in the civil rights law to be construed consistently with other disability provisions.

**Effective:** July 1, 1999.

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**Simpson**

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January 8, 1999, read first time and referred to Committee on Public Policy.

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First Regular Session 111th General Assembly (1999)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1998 General Assembly.

## SENATE BILL No. 328

A BILL FOR AN ACT to amend the Indiana Code concerning civil law and procedure.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1       SECTION 1. IC 22-9-1-3 IS AMENDED TO READ AS FOLLOWS  
2       [EFFECTIVE JULY 1, 1999]: Sec. 3. As used in this chapter:  
3       (a) "Person" means one (1) or more individuals, partnerships,  
4       associations, organizations, limited liability companies, corporations,  
5       labor organizations, cooperatives, legal representatives, trustees,  
6       trustees in bankruptcy, receivers, and other organized groups of  
7       persons.  
8       (b) "Commission" means the civil rights commission created under  
9       section 4 of this chapter.  
10       (c) "Director" means the director of the civil rights commission.  
11       (d) "Deputy director" means the deputy director of the civil rights  
12       commission.  
13       (e) "Commission attorney" means the deputy attorney general, such  
14       assistants of the attorney general as may be assigned to the  
15       commission, or such other attorney as may be engaged by the  
16       commission.  
17       (f) "Consent agreement" means a formal agreement entered into in



1 lieu of adjudication.

2 (g) "Affirmative action" means those acts that the commission  
3 determines necessary to assure compliance with the Indiana civil rights  
4 law.

5 (h) "Employer" means the state or any political or civil subdivision  
6 thereof and any person employing six (6) or more persons within the  
7 state, except that the term "employer" does not include:

8 (1) any nonprofit corporation or association organized exclusively  
9 for fraternal or religious purposes;

10 (2) any school, educational, or charitable religious institution  
11 owned or conducted by or affiliated with a church or religious  
12 institution; or

13 (3) any exclusively social club, corporation, or association that is  
14 not organized for profit.

15 (i) "Employee" means any person employed by another for wages or  
16 salary. However, the term does not include any individual employed:

17 (1) by his parents, spouse, or child; or

18 (2) in the domestic service of any person.

19 (j) "Labor organization" means any organization that exists for the  
20 purpose in whole or in part of collective bargaining or of dealing with  
21 employers concerning grievances, terms, or conditions of employment  
22 or for other mutual aid or protection in relation to employment.

23 (k) "Employment agency" means any person undertaking with or  
24 without compensation to procure, recruit, refer, or place employees.

25 (l) "Discriminatory practice" means:

26 (1) the exclusion of a person from equal opportunities because of  
27 race, religion, color, sex, disability, national origin, or ancestry;

28 (2) a system that excludes persons from equal opportunities  
29 because of race, religion, color, sex, disability, national origin, or  
30 ancestry;

31 (3) the promotion of racial segregation or separation in any  
32 manner, including but not limited to the inducing of or the  
33 attempting to induce for profit any person to sell or rent any  
34 dwelling by representations regarding the entry or prospective  
35 entry in the neighborhood of a person or persons of a particular  
36 race, religion, color, sex, disability, national origin, or ancestry;  
37 or

38 (4) a violation of IC 22-9-5 that occurs after July 25, 1992, and is  
39 committed by a covered entity (as defined in IC 22-9-5-4);

40 **(5) the imposition or application of eligibility criteria that**  
41 **screen out or tend to screen out an individual with a disability**  
42 **or a class of individuals with disabilities from fully and**

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equally enjoying a good, a service, a facility, a privilege, an advantage, or an accommodation unless the eligibility criteria can be shown to be necessary for the provision of the good, service, facility, privilege, advantage, or accommodation being offered;

(6) failure to make reasonable modifications in policies, practices, or procedures if the modifications are necessary to afford a good, service, facility, privilege, advantage, or accommodation to an individual with disabilities unless making the modifications can be demonstrated to fundamentally alter the nature of the good, service, facility, privilege, advantage, or accommodation being offered;

(7) failure to take the steps that may be necessary to insure that no individual with a disability is excluded, denied service, segregated, or otherwise treated differently than other individuals because of the absence of auxiliary aids and services unless taking the steps can be demonstrated to:

(A) fundamentally alter the nature of a good, service, facility, privilege, advantage, or accommodation being offered; and

(B) result in an undue burden;

(8) failure to remove:

(A) in a facility initially constructed before July 1, 1999:

(i) architectural barriers; and

(ii) communication barriers that are structural in nature; or

(B) transportation barriers in a vehicle or rail passenger car initially constructed before July 1, 1999, and used by an establishment for transporting individuals (not including barriers that can only be removed through the retrofitting of a vehicle or rail passenger car by installation of a hydraulic or other lift);

if removal is readily achievable; and

(9) failure to make a good, a service, a facility, a privilege, an advantage, or an accommodation available, if:

(A) removal of a barrier described in subdivision (8) is not readily achievable; but

(B) alternative methods of making the good, service, facility, privilege, advantage, or accommodation available are readily achievable.

Every discriminatory practice relating to the acquisition or sale of real estate, education, public accommodations, employment, or the

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1 extending of credit (as defined in IC 24-4.5-1-301) shall be considered  
2 unlawful unless it is specifically exempted by this chapter.

3 (m) "Public accommodation" means any establishment that caters  
4 or offers its services or facilities or goods to the general public.

5 (n) "Complainant" means:

6 (1) any individual charging on ~~his~~ **the individual's** own behalf to  
7 have been personally aggrieved by a discriminatory practice; or

8 (2) the director or deputy director of the commission charging that  
9 a discriminatory practice was committed against a person other  
10 than ~~himself~~ **the director or deputy director** or a class of people,  
11 in order to vindicate the public policy of the state (as defined in  
12 section 2 of this chapter).

13 (o) "Complaint" means any written grievance that is:

14 (1) sufficiently complete and filed by a complainant with the  
15 commission; or

16 (2) filed by a complainant as a civil action in the circuit or  
17 superior court having jurisdiction in the county in which the  
18 alleged discriminatory practice occurred.

19 The original of any complaint filed under subdivision (1) shall be  
20 signed and verified by the complainant.

21 (p) "Sufficiently complete" refers to a complaint that includes:

22 (1) the full name and address of the complainant;

23 (2) the name and address of the respondent against whom the  
24 complaint is made;

25 (3) the alleged discriminatory practice and a statement of  
26 particulars thereof;

27 (4) the date or dates and places of the alleged discriminatory  
28 practice and if the alleged discriminatory practice is of a  
29 continuing nature, the dates between which continuing acts of  
30 discrimination are alleged to have occurred; and

31 (5) a statement as to any other action, civil or criminal, instituted  
32 in any other form based upon the same grievance alleged in the  
33 complaint, together with a statement as to the status or disposition  
34 of the other action.

35 No complaint shall be valid unless filed within one hundred eighty  
36 (180) days from the date of the occurrence of the alleged  
37 discriminatory practice.

38 (q) "Sex" as it applies to segregation or separation in this chapter  
39 applies to all types of employment, education, public accommodations,  
40 and housing. However:

41 (1) it shall not be a discriminatory practice to maintain separate  
42 rest rooms;

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(2) it shall not be an unlawful employment practice for an employer to hire and employ employees, for an employment agency to classify or refer for employment any individual, for a labor organization to classify its membership or to classify or refer for employment any individual, or for an employer, labor organization, or joint labor management committee controlling apprenticeship or other training or retraining programs to admit or employ any other individual in any program on the basis of sex in those certain instances where sex is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise; and

(3) it shall not be a discriminatory practice for a private or religious educational institution to continue to maintain and enforce a policy of admitting students of one (1) sex only.

(r) "Disabled" or "disability" means: ~~the~~

(1) ~~a physical or mental condition of a person that constitutes a substantial disability. In reference to employment, under this chapter, "disabled or disability" also means the physical or mental condition of a person that constitutes a substantial disability unrelated to the person's ability to engage in a particular occupation. impairment that substantially limits one (1) or more of an individual's major life activities;~~

(2) ~~a record of having an impairment described in subdivision (1); or~~

(3) ~~being regarded as having an impairment described in subdivision (1).~~

**The term does not include current illegal use of or addiction to a controlled substance (as defined in Section 102 of the Controlled Substance Act (21 U.S.C. 802)). The term does not include an individual solely because the individual is a transvestite.**

SECTION 2. IC 22-9-1-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 6. (a) The commission shall establish and maintain a permanent office in the city of Indianapolis.

(b) The commission may appoint such attorneys and other employees and agents as it considers necessary, fix their compensation within the limitation provided by law, and prescribe their duties. All these employees, with the exception of the executive director and attorneys, shall be appointed by the commission from eligible lists to be promulgated by the department of personnel as the result of a competitive examination held under IC 4-15-2 and rules of the department and on the basis of training, practical experience, education, and character. However, special consideration and due



weight shall be given to the practical experience and training that a person may have for the particular position involved regardless of ~~his~~ **the person's** academic training. Promotions, suspensions, and removal of persons appointed from such lists shall be in accordance with IC 4-15-2. The reasonable and necessary traveling expenses of each employee of the commission while actually engaged in the performance of duties in behalf of the commission shall be paid in accordance with the state travel policies and procedures established by the Indiana department of administration and approved by the budget agency.

(c) Except as it concerns judicial review, the commission may adopt rules under IC 4-22-2 to implement this chapter.

(d) The commission shall formulate policies to effectuate the purposes of this chapter and make recommendations to agencies and officers of the state or local subdivisions thereof to effectuate such policies. The several departments, commissions, divisions, authorities, boards, bureaus, agencies, and officers of the state or any political subdivision or agency thereof shall furnish the commission, upon its request, all records, papers, and information in their possession relating to any matter before the commission.

(e) The commission shall receive and investigate complaints alleging discriminatory practices. The commission shall not hold hearings in the absence of a complaint. All investigations of complaints shall be conducted by staff members of the civil rights commission or their agents.

(f) The commission may create such advisory agencies and conciliation councils, local or statewide, as will aid in effectuating the purposes of this chapter. The commission may itself, or it may empower these agencies and councils to:

(1) study the problems of discrimination in the areas covered by section 2 of this chapter when based on race, religion, color, sex, handicap, national origin, or ancestry; and

(2) foster through community effort, or otherwise, good will among the groups and elements of the population of the state.

These agencies and councils may make recommendation to the commission for the development of policies and procedures in general. Advisory agencies and conciliation councils created by the commission shall be composed of representative citizens serving without pay but with reimbursement for reasonable and necessary actual expenses.

(g) The commission may issue such publications and such results of investigations and research as in its judgment will tend to promote good will and minimize or eliminate discrimination because of race, religion, color, sex, handicap, national origin, or ancestry.



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(h) The commission shall prevent any person from discharging, expelling, or otherwise discriminating against any other person because ~~he~~ **the person:**

(1) filed a complaint, testified in any hearing before this commission, or in any way assisted the commission in any matter under its investigation;

(2) **assisted or participated in any manner in an investigation, a proceeding, or a hearing under this chapter; or**

(3) **opposed a practice that constitutes an unlawful employment practice.**

(i) The commission may hold hearings, subpoena witnesses, compel their attendance, administer oaths, take the testimony of any person under oath, and require the production for examination of any books and papers relating to any matter under investigation or in question before the commission. The commission may make rules as to the issuance of subpoenas by individual commissioners. Contumacy or refusal to obey a subpoena issued under this section shall constitute a contempt. All hearings shall be held within Indiana at a location determined by the commission. A citation of contempt may be issued upon application by the commission to the circuit or superior court in the county in which the hearing is held or in which the witness resides or transacts business.

(j) The commission may appoint administrative law judges other than commissioners, when an appointment is deemed necessary by a majority of the commission. The administrative law judges shall be members in good standing before the bar of Indiana and shall be appointed by the chairman of the commission. An administrative law judge appointed under this subsection shall have the same powers and duties as a commissioner sitting as an administrative law judge. However, the administrative law judge may not issue subpoenas.

(k) The commission shall state its findings of fact after a hearing and, if the commission finds a person has engaged in an unlawful discriminatory practice, shall cause to be served on this person an order requiring the person to cease and desist from the unlawful discriminatory practice and requiring the person to take further affirmative action as will effectuate the purposes of this chapter, including but not limited to the power:

(A) to restore ~~the~~ complainant's losses incurred as a result of discriminatory treatment, as the commission may deem necessary to assure justice; however, this specific provision when applied to orders pertaining to employment shall include only wages, salary, or commissions;



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(B) to require the posting of notice setting forth the public policy of Indiana concerning civil rights and **the** respondent's compliance with the policy in places of public accommodations; (C) to require proof of compliance to be filed by **the** respondent at periodic intervals; and (D) to require a person who has been found to be in violation of this chapter and who is licensed by a state agency authorized to grant a license to show cause to the licensing agency why **his the** license should not be revoked or suspended.

(l) Judicial review of a cease and desist order or other affirmative action as referred to in this chapter may be obtained under IC 22-9-8. If no proceeding to obtain judicial review is instituted within thirty (30) days from receipt of notice by a person that an order has been made by the commission, the commission, if it determines that the person upon whom the cease and desist order has been served is not complying or is making no effort to comply, may obtain a decree of a court for the enforcement of the order in circuit or superior court upon showing that the person is subject to the commission's jurisdiction and resides or transacts business within the county in which the petition for enforcement is brought.

(m) If, upon all the evidence, the commission shall find that a person has not engaged in any unlawful practice or violation of this chapter, the commission shall state its findings of facts and shall issue and cause to be served on the complainant an order dismissing the complaint as to the person.

(n) The commission may furnish technical assistance requested by persons subject to this chapter to further compliance with this chapter or with an order issued thereunder.

(o) The commission shall promote the creation of local civil rights agencies to cooperate with individuals, neighborhood associations, and state, local, and other agencies, both public and private, including agencies of the federal government and of other states.

(p) The commission may reduce the terms of conciliation agreed to by the parties to writing (to be called a consent agreement) that the parties and a majority of the commissioners shall sign. When signed, the consent agreement shall have the same effect as a cease and desist order issued under subsection (k). If the commission determines that a party to the consent agreement is not complying with it, the commission may obtain enforcement of the consent agreement in a circuit or superior court upon showing that the party is not complying with the consent agreement and the party is subject to the commission's jurisdiction and resides or transacts business within the county in



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1 which the petition for enforcement is brought.

2 (q) In lieu of investigating a complaint and holding a hearing under  
3 this section, the commission may issue an order based on findings and  
4 determinations by the federal Department of Housing and Urban  
5 Development or the federal Equal Employment Opportunity  
6 Commission concerning a complaint that has been filed with one (1) of  
7 these federal agencies and with the commission. The commission shall  
8 adopt by rule standards under which the commission may issue such an  
9 order.

10 (r) Upon notice that a complaint is the subject of an action in a  
11 federal court, the commission shall immediately cease investigation of  
12 the complaint and may not conduct hearings or issue findings of fact or  
13 orders concerning that complaint.

14 SECTION 3. IC 22-9-1-11 IS AMENDED TO READ AS  
15 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 11. In addition to its  
16 power to investigate the discriminatory practices referred to in this  
17 chapter, the commission may receive written complaints of violation of  
18 this chapter or other discriminatory practices based upon race, religion,  
19 color, sex, national origin, **disability**, or ancestry and to investigate  
20 such complaints as it deems meritorious, or to conduct such  
21 investigation in the absence of complaints whenever it deems it in the  
22 public interest. It may transmit to the general assembly its  
23 recommendations for legislation designed to aid in the removing of  
24 such discrimination.

25 SECTION 4. IC 22-9-1-13 IS AMENDED TO READ AS  
26 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 13. (a) The prohibition  
27 against discrimination in employment because of disability does not  
28 apply to failure of an employer to employ or to retain as an employee  
29 any person who because of a disability is physically or otherwise  
30 unable to efficiently and safely perform, at the standards set by the  
31 employer, the duties required in that job.

32 (b) After a person with a disability is employed, the employer shall  
33 not be required under this chapter to promote or transfer such person  
34 with a disability to another job or occupation, unless, prior to such  
35 transfer, such person with a disability by training or experience is  
36 qualified for such job or occupation.

37 (c) This section shall not be construed to require any employer to  
38 modify any physical accommodations or administrative procedures to  
39 accommodate a person with a disability. **discriminatory practices in**  
40 **this chapter shall be construed consistently with the provisions in**  
41 **IC 22-9-5.**

